



# PUBLIC NOTICE

**Federal Communications Commission**  
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**Washington, D.C. 20554**

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**DA 09-904**  
**April 29, 2009**

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON  
PETITION FOR EXPEDITED RULEMAKING AND OTHER RELIEF  
FILED ON BEHALF OF AMERICAN BIRD CONSERVANCY, DEFENDERS OF  
WILDLIFE AND NATIONAL AUDUBON SOCIETY REGARDING  
COMMISSION IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT,  
THE ENDANGERED SPECIES ACT, AND  
THE MIGRATORY BIRD TREATY ACT**

**WT Docket No. 08-61**  
**WT Docket No. 03-187**

**Comment Date: May 29, 2009**  
**Reply Comment Date: June 15, 2009**

On April 14, 2009, American Bird Conservancy, Defenders of Wildlife, and National Audubon Society ("Petitioners") filed a "Petition for Expedited Rulemaking and Other Relief."<sup>1</sup> Petitioners request that the Commission adopt new rules on an expedited basis, which they assert are necessary to comply with the National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA"), and the Migratory Bird Treaty Act ("MBTA"), and their implementing regulations, and to carry out the mandate of the U.S. Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027 (D.C. Cir. 2008).<sup>2</sup> Specifically, Petitioners request that the FCC undertake the following actions:

- Amend the Commission's regulations that implement NEPA, "consistent with Council on Environmental Quality regulations and guidance," to "cure deficiencies" and to ensure that only Commission actions that have no significant environmental effects individually or cumulatively are categorically excluded;
- Prepare a programmatic environmental impact statement addressing the environmental consequences of its Antenna Structure Registration ("ASR") program on migratory birds, their habitats, and the environment;

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<sup>1</sup> Petition for Expedited Rulemaking and Other Relief on behalf of American Bird Conservancy, Defenders of Wildlife and National Audubon Society (filed April 14, 2009). The petitioners filed their pleading in two dockets, WT Docket No. 08-61 (responding to remand from the U.S. Court of Appeals in *American Bird Conservancy, Inc. v. FCC*) and WT Docket No. 03-187 (Effects of Communications Towers on Migratory Birds) (*Migratory Birds Proceeding*).

<sup>2</sup> *Id.* at i.

- Promulgate rules to clarify the roles, responsibilities and obligations of the Commission, applicants, and non-federal representatives in complying with the ESA;
- Consult with the U.S. Fish and Wildlife Service on the ASR program regarding all effects of towers and antenna structures on endangered and threatened species; and
- Complete the proposed rulemaking in the *Migratory Birds Proceeding* to adopt measures to reduce migratory bird deaths in compliance with the MBTA.<sup>3</sup>

We seek comment on the *Petition for Expedited Rulemaking and Other Relief*. We deem the proceeding, for *ex parte* purposes, as “permit-but-disclose” in accordance with Section 1.1200(a) of the Commission's rules, subject to the requirements under Section 1.1206(b).

All comments should refer to WT Docket Nos. 08-61 and 03-187. Comments may be filed using (1) the Commission's Electronic Comment Filing System (“ECFS”), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.<sup>4</sup>

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.<sup>5</sup> Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, “get form.” A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530, (202) 418-0432 (TTY).

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<sup>3</sup> *Id.* at iv-v.

<sup>4</sup> See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

<sup>5</sup> Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.

Wireless Telecommunications Bureau contact: Aaron Goldschmidt at (202) 418-7146.

By the Acting Chief, Wireless Telecommunications Bureau

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